

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

LEWIS ENVIRONMENTAL, INC.

and

Cases 4-CA-35669  
4-CA-36542

INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL 542, AFL-CIO

DECISION AND ORDER

On January 26, 2010, the two sitting members of the Board issued an unpublished Decision and Order which approved and adopted the Formal Settlement Stipulation entered into by Respondent and the General Counsel of the National Labor Relations Board, providing for a consent order by the Board.<sup>1</sup> On June 17, 2010, the United States Supreme Court issued its decision in *New Process Steel, L.P. v. NLRB*, 130 S.Ct. 2635, holding that under Section 3(b) of the Act, in order to exercise the delegated authority of the Board, a delegee group of at least three members must be maintained. Thereafter, the Charging Party filed an "Appeal of Board's Decision" averring that under *New Process Steel* the formal settlement agreement was improper, and seeking to have the Board overturn the Formal Settlement Agreement and hold this case in abeyance

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<sup>1</sup> Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the powers of the National Labor Relations Board in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Thereafter, pursuant to this delegation, the two sitting members issued decisions and orders in unfair labor practice and representation cases.

until such time as *Oil Capitol Sheet Metal*, 349 NLRB 1348 (2007) is revisited by the new five member Board.<sup>2</sup>

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.<sup>3</sup>

The Board has considered the Formal Settlement Stipulation and the Charging Party's objections thereto and has decided to approve the Formal Settlement Stipulation for the reasons stated in the January 26, 2010 unpublished Decision and Order, and to adopt the findings of fact and order set forth in that Decision and Order, which is incorporated herein by reference.

Dated, Washington, D.C., August 25, 2010.

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Wilma B. Liebman, Chairman

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Peter C. Schaumber, Member

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Mark Gaston Pearce, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

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<sup>2</sup> Thus, while styled as an "appeal," the Charging Party's submission is in the nature of a motion for reconsideration pursuant to Section 102.48(d)(1) of the Board's Rules and Regulations.

<sup>3</sup> Consistent with the Board's general practice and for reasons of administrative economy, the panel includes the members who participated in the original decision. Furthermore, under the Board's standard procedures applicable to all cases assigned to a panel, the Board members not assigned to the panel had the opportunity to participate in the adjudication of this case at any time up to the issuance of this decision.